



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL) NO. 1100 OF 2025

1. Sameer Abdulhusein Lalani,
Aged about 51 years, Occ. Business,
R/o. 04, Asiya Manor, 67/A, Perry Road,
Bandra (West), Mumbai- 400052.
2. Heena W/o. Sameer Lalani,
Aged about 47 years, Occ. Housewife,
R/o. 04, Asiya Manor, 67/A, Perry Road,
Bandra (West), Mumbai- 400052.
3. Alishaan S/o. Sameer Lalani,
Aged about 24 years, Occ. Business,
R/o. 04, Asiya Manor, 67/A, Perry Road,
Bandra (West), Mumbai- 400052.

... APPLICANTS

// VERSUS //

1. State of Maharashtra through
P. S. O. of Police Station, Kalamna,
Nagpur.
2. Sachin S/o. Rajesh Dawale,
Aged about 47 years, Occ. Service,
Address at 145, 146, Om Industries
India Private Ltd., Juna Pardi Naka,
Bhandara Road, Nagpur- 4400035.
Also at Om Industries India Private Ltd.,
Smruti Nagar, Koradi Road, Nagpur.

.. NON-APPLICANTS

Shri Z. Z. Haq, Advocate for applicants.

Ms Sangeeta Jachak, APP for non-applicant no. 1/State.

Shri S. P. Dharmadhikari, Sr. Advocate a/w. Shri R. M. Daga, Advocate
for non-applicant no. 2.

**CORAM :- SMT. M. S. JAWALKAR &
M. W. CHANDWANI, JJ.**

RESERVED ON :- 20.11.2025

PRONOUNCED ON :- 22.12.2025

JUDGMENT (PER: M. W. CHANDWANI, J.):-

Heard.

2. The application seeks exercise of inherent powers of this Court under Section 528 of the Bhartiya Nagrik Suraksha Sanhita, 2023 for quashing the First Information Report (FIR) No. 555/2025 registered at Police Station Kalamna, Nagpur for the offence punishable under Sections 420 and 406 r/w. 34 of the Indian Penal Code (IPC).

3. Brief facts necessary to decide the application are as under:-

The applicants are the Directors/Shareholders of Royal Dry Fruits Private Ltd. (for short, "RDFPL"). On 09.07.2025, FIR came to be registered at the instance of one Sachin Rajesh Dhawale, an authorized representative of Om Industries India Private Ltd. (hereinafter referred to as "the complainant company") a subsidiary company of Haldiram Group of Companies (HGC) by Police Station Kalamna, Nagpur against the applicants for the offences punishable under Sections 420 and 406 r/w. Section 34 of IPC.

4. The FIR depicts that applicant no. 1- Sameer Abdulhusein Lalani, a Director of RDFPL approached the complainant company through its office bearers and presented a business plan seeking investment in RDFPL by providing sale details, market valuation of RDFPL. A term sheet came to be prepared wherein, the complainant company agreed to purchase 35.05% shares of RDFPL for a total sum of Rs.12.50 crores. An amount of Rs.4.90 crores was accepted by the applicants for purchase of new raw material. Later on, it was also discovered that the applicants had sought investment on the basis of fabricated documents and again have induced the complainant company to re-structure the transactions differently. Accordingly, a Memorandum of Understanding (MoU) dated 08.09.2023 came to be executed wherein, the complainant company was to have share to the extent of 76% of the shares holding instead of 35.05%. Thereafter, the amount of Rs.4.5 crores came to be invested. Subsequently, it was revealed that the complainant company has been cheated by the applicants. Thereafter, on demand of return of Rs.9,38,59,003/- by the complainant company, the applicants failed to repay the same.

5. Mr. Z. Z. Haq, learned counsel appearing on behalf of the applicants submitted that the facts of the case would clearly demonstrate that the transactions between the applicants and the complainant company was a business transaction and several

documents have been executed after due diligence. A civil dispute has been given the colour of a criminal offence just to harass the applicants. It is submitted that the complainant company approached RDFPL for investment and to acquire the controlling stake in RDFPL. Accordingly, a term sheet was prepared and the complainant company acquired unrestricted excess to RDFPL, grain and stock. After due diligence, on 08.09.2023 MoU came to be executed wherein, the provisions established that the complainant company will exercise effective managerial, financial and direct control over RDFPL. By way of the said MoU, the stake of the complainant company was increased from 51.29% to 76%. Even the nominees of the complainant company were taken as Board of Directors in RDFPL.

6. Since, the complainant company failed to comply with the contractual obligations enumerated in the investment agreement dated 24.06.2024, a notice came to be issued by applicant no. 1. In reply, the complainant company alleged non-performance on behalf of RDFPL and unilaterally terminated the investment agreement. The complainant company even filed a Company Petition before the National Company Law Tribunal (NCLT), Mumbai which came to be dismissed. Since, civil remedy is already availed by the complainant company where they could not succeed, the present application came to be filed by giving it the colour of criminality.

7. According to the learned counsel for the applicants, the allegations made in the FIR do not constitute a cognizable offence since no ingredients for the offences punishable under Sections 420 and 406 r/w. 34 of the IPC are palpable from the complaint. If civil remedy is available, the High Court should not hesitate to quash criminal proceedings. Every single breach of trust may not necessarily result in penal action for breach of trust. If there is a civil wrong, a person may seek the remedy of claiming damages in a Civil Court in absence of *mens rea* and criminal law cannot be put into motion. According to the learned counsel for the applicants, the present FIR is nothing but an abuse of the process of law. To buttress his submission, he seeks to rely upon the following decisions :-

- i) ***Anukul Singh Vs. State of Uttar Pradesh and another [2025 SCC Online SC 2060] (para 11)*** wherein the Supreme Court reiterated the principle laid down in the case of ***State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335]***.
- ii) ***S. N. Vijayalakshmi and others Vs. State of Karnataka and another [2025 SCC Online SC 1575]*** wherein, in para 42 and 43 it has been held as under:-

“42. Coming to the second question i.e., whether civil and criminal proceedings both can be maintained on the very same set of allegations qua the same person(s), the answer stricto sensu, is that there is no bar to simultaneous civil and criminal proceedings. If the element of criminality is there, a civil case can co-exist with a criminal case on the same facts. The fact

that a civil remedy has already been availed of by a complainant, ipso facto, is not sufficient ground to quash an FIR, as pointed out, inter alia, in *P Swaroopa Rani v M Hari Narayana*, (2008) 5 SCC 765 and *Syed Aksari Hadi Ali Augustine Imam v State (Delhi Admn.)*, (2009) 5 SCC 528. The obvious caveat being that the allegations, even if having a civil flavour to them, must prima facie disclose an overwhelming element of criminality. In the absence of the element of criminality, if both civil and criminal cases are allowed to continue, it will definitely amount to abuse of the process of the Court, which the Courts have always tried to prevent by putting a stop to any such criminal proceeding, where civil proceedings have already been instituted with regard to the same issue, and the element of criminality is absent. If such element is absent, the prosecution in question would have to be quashed. In this connection, *Paramjeet Batra v State of Uttarakhand*, (2013) 11 SCC 673 can be referred to:

‘12. ... Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.’ (emphasis supplied)

43. In *Usha Chakraborty v State of West Bengal*, (2023) 15 SCC 135, while quashing the FIR therein and further proceedings based thereon, it was observed ‘...the factual position thus would reveal that the genesis as also the purpose of criminal proceedings are nothing but the aforesaid incident and further that the dispute involved is essentially of civil nature.’

iii) ***Shailesh Kumar Singh @ Shailesh R. Singh Vs. State of Uttar Pradesh and others [2025 SCC Online SC 1462]*** wherein, in para 10, it has been held as under:-

“10. How many times the High Courts are to be reminded that to constitute an offence of cheating, there has to be something more than prima facie on record to indicate that the intention of the accused was to cheat the complainant right from

the inception. The plain reading of the FIR does not disclose any element of criminality.”

iv) ***Delhi Race Club (1940) Ltd. And others Vs. State of Uttar Pradesh and another [(2024) 10 SCC 690]*** wherein, para nos. 41 to 43, it has been held as under:-

“41. The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is this intention, which is the gist of the offence.

42. Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence of breach of trust has been committed must be either the property of some person other than the accused or the beneficial interest in or ownership’ of it must be of some other person. The accused must hold that property on trust of such other person. Although the offence, i.e. the offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and different in basic concept.

43. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e., since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously.”

8. Ms. Jachak, learned APP appearing for non-applicant no. 1/State submitted that since the beginning, the applicants knew that the promises and assurances given by them are false. The applicants

utilized the amount of the complainant company for their personal use and therefore, the ingredients for the offences punishable under Sections 406 and 420 r/w. 34 of the IPC are fully attracted in the present case. It is also contended on behalf of the learned APP that though, the applicants have been granted bail on the condition of cooperation in the investigation but they did not appear before the Investigating Officer (IO) to cooperate with the investigation. It is also contended that even after the order of this Court, applicant no. 1 did not appear before the IO to cooperate with the investigation and therefore, for the reason of non-cooperation, applicant no. 1 is disentitled to get any relief.

9. Mr. S. P. Dharmadhikari, learned Senior Advocate along with Mr. Daga, learned counsel appearing for the complainant company vehemently submitted that the FIR is not an encyclopedia. The Court has to consider the entire case-diary which includes supplementary statement of the complaint. According to him, even though the civil remedy has been exhausted, if the transactions have a criminal texture, the complainant cannot be precluded from filing a criminal complaint.

10. The sum and substance of the argument of the learned Senior Advocate is that civil and criminal remedies can go hand in

hand. To buttress his submission, he seeks to rely upon the decision of the Supreme Court in the case of ***Kathyayini Vs. Sidharth P. S. Reddy and others [2025 SCC Online SC 1428]*** wherein, the Supreme Court in para no. 23 has observed that pendency of civil proceedings on the same subject matter, involving the same parties is no justification to quash the criminal proceedings if a *prima facie* case exists against the accused persons.

11. The learned Senior Advocate assisted by the learned counsel further vehemently submitted that the amount paid by the complainant company has been utilized by the applicants for their personal use and no shares have been transferred in the name of the complainant company by the applicants as agreed in the agreement. According to him, the investigation papers clearly demonstrate that the applicants not only cheated the complainant company but also misappropriated the amount paid by the complainant company for their personal use and therefore, he sought rejection of the application.

12. We have perused the case-diary as well as the say of the prosecution. Perusal of the case-diary reveals that applicant no. 1 approached Mr. Kamal Agrawal, the Director of the complainant company for investing in RDFPL and applicant no. 1 also requested for a business loan. Mr. Kamal Agrawal directed Mr. Prakash Iyer, the

Investment Advisor of the complainant company to study the proposal of the applicants. In the month of January-2023, the terms were broadly fixed by executing a 'Term Sheet' between RDFPL and Vivek Ventures Private Ltd., a subsidiary company of the complainant company wherein, it was particularly agreed that in exchange of the investment of Rs.12.50 crores, 35.05% of the equity shares of RDFPL will be transferred in the name of Vivek Ventures Private Ltd. (VPT), another subsidiary company of HGC. The said terms were not binding on any of the parties but the intention of both the parties was to proceed with the transaction in such a manner. Thereafter, the complainant company conducted market valuation through an independent company and found that the valuation of RDFPL as informed by the applicants was more than the actual market value. After bargaining, MoU dated 08.09.2023 was executed between the complainant company and the applicants and ultimately it was agreed that Mr. Kamal Agrawal would invest Rs.15 crores in RDFPL. Till the date of MoU, the complainant company and VPT/HGC from time to time had advanced a business loan to RDFPL to the extent of Rs.4,89,82,003/-. This amount of the loan was to be adjusted towards the group investment of Rs.15 crores. By the said MoU, it was also agreed to transfer the share of the applicants in RDFPL in favour of HGC on a rate which was to be decided at a future date. An amount of

Rs.1 crore was also advanced to applicant nos. 1 towards purchase of the said shares to the extent of 76%. On 24.06.2024, Investment Agreement was entered into between the complainant company and the applicants toward sale of the shares on a price fixed by the said agreement. In the said agreement, the shares of the applicants to the extent of 81.6% were agreed to be sold to Harrshiv Heathy Foods and More Private Ltd. (for short, "Harrshiv Foods"), a subsidiary company of HGC and the complainant company for a consideration of Rs. 3 crores. Since, an amount of Rs. 1 crore was already advanced, it was decided that for the transferred share, an amount of Rs.1,61,00,000/- was to be paid to the applicants and remaining Rs.39 lakhs was to be adjusted at a later date. By the agreement, it was also agreed by the complainant company to release collateral security provided by the applicants to South Indian Bank from the date of transfer of the shares.

13. It appears that on 16.10.2024, a notice came to be issued by the applicants to the complainant company and Harrshiv Foods asking for payment of Rs. 1,61,00,000/- and for release of collateral security of the applicants from South Indian Bank since the shares have already been transferred. While, replying to the said notice, the HGC also raised a dispute about the breach of agreement by the applicants. Thus, it appears that due to some dispute, both the parties accused each-other of breach of the conditions agreed by them in the aforesaid

agreement. It is alleged that applicant no. 1- Sameer Lalani, breached the conditions by resigning from Directorship of RDFPL without prior permission. It is also alleged that South Indian Bank has made a Newspaper Publication declaring RDFPL as a defaulter. Thus, it is alleged that the complainant company had advanced an amount of Rs.4,89,82,003/- to RDFPL and also an amount of Rs. 1 crore to the account of applicant no. 1– Sameer Lalani. Likewise, from the account of Harrshiv Foods, an amount of Rs.2,56,70,000/- was credited in the account of RDFPL. Therefore, it has been alleged that the applicants cheated the complainant company by breaching the trust of the complainant company.

14. Thus, what we have gathered is that, there was an agreement of investment between the complainant company and RDFPL including purchase of the shares of RDFPL to the extent of 81.06% for an amount of Rs.3 crores. It appears that by way of that agreement Rs.9,38,59,003/- came to be invested by the complainant company and Harrshiv Foods in RDFPL and an amount of Rs. 1 crore was advanced to the applicants towards purchase of applicants shares in view of the MoU dated 08.09.2023 and the investment agreement dated 24.06.2024.

15. Both the parties accused each-other of breach of the conditions mentioned in the agreement. Though, the FIR states that the applicants, by producing fake documents got the agreement of investment executed from the complainant company but perusal of the agreement reveals that initially, only the term sheet was executed which was not binding upon any of the parties. Rather, Mr. Kamal Agrawal directed Mr. Prakash Iyer, the Investment Advisor, to get the valuation of RDFPL done. After conducting valuation, MoU dated 08.09.2023 was finalized wherein, it was agreed by the complainant company to invest an amount of Rs. 15 crores apart from purchase of shares of RDFPL for Rs. 3 crores by way of investment agreement dated 24.06.2024. Thus, *prima facie* it cannot be said that the proposal made by the applicants in the term sheet was relied upon by the complainant company and on that basis, the agreement of investment came to be executed. Rather, an independent valuation was done by the complainant company and therefore, the MoU dated 08.09.2023 was executed. Thus, we do not find dishonest or fraudulent intention from the beginning of the transaction. Nor do we find that crediting an amount of Rs.1 crore in the account of applicant no. 1 by the complainant company amounts to criminal breach of trust. [See *Delhi Race Club* (supra)]. Therefore, we do not see that there are

any ingredients of cheating and therefore, *prima facie* a case is not made out for the offence punishable under Section 420 of the IPC.

16. No doubt, the FIR is not encyclopedia of all imputations but it must disclose commission of a cognizable offence as held in the case of ***Somjeet Mallick Vs. State of Jharkhand and others [2024 INSC 772]*** relied upon by the learned counsel for non-applicant no. 2. However, bare perusal of the FIR does not reveal that there are allegations of misappropriation as claimed by the learned APP appearing for non-applicant no. 1 and the learned counsels appearing on behalf of the non-applicant no. 2. Rather, they are harping on credit of an amount of Rs. 1 crore in the account of applicant no. 1- Sameer Lalani.

17. Be that as it may, the fact remains that an amount of Rs. 1 crore was given as an advance by the complainant company to applicant no. 1- Sameer Lalani in his personal capacity towards advance for purchase of the shares of Sameer Lalani and other applicants which they hold in RFDPL. Therefore, though the amount of Rs. 1 crore was credited, it has been credited towards the advance payment for purchase of the shares. That apart, even this amount has not been credited to the applicant no. 1- Sameer Lalani as the Director

of RFDPL rather, this amount was credited by the complainant company in the personal account of Sameer Lalani.

18. The case-diary further reveals that civil proceedings were initiated by the complainant company before the National Company Law Tribunal (NCLT) for recovery of the loan amount claiming themselves to be the creditors of the applicants' company. However, the said petition came to be dismissed by the NCLT treating this as an investment and share-purchase agreement.

19. Having gone through the complaint and the case-diary, it is quite clear that the complainant company's grievance is regarding failure of the applicants to pay the outstanding amount due to the alleged breach of agreement. Thus, essentially the dispute between both the parties is for breach of conditions of the agreement. It is settled law that mere breach of contract is not itself a criminal offence and only give rise to civil liability of damages. Therefore, we do not see any ingredients of the offences punishable under Sections 420 and 406 of the IPC being made out. The case in hand is covered by the decision of the Supreme Court in case of ***State of Haryana v. Bhajan Lal*** (supra) and ***Anukul Singh*** (supra).

20. So far as the submission of the non-applicants that inspite of directions, applicant no. 1 did not appear before the IO is concerned, the IO himself has confirmed before this Court that applicant no. 1 has been admitted to the hospital and therefore, the submission has no force.

21. In view of the above, we pass the following order:-

- i) The application is allowed.
- ii) The First Information Report No. 555/2025 registered with Police Station Kalamna, Nagpur registered against the applicants under Sections 420 and 406 r/w. Section 34 of the IPC is hereby quashed.

(M. W. CHANDWANI, J.)

(SMT. M. S. JAWALKAR, J.)